FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.2868 OF 2006

Mr.Athique Ahmed Mohammed Usman Shaikh)..Applicant
Versus
The State of Maharashtra)..Respondent

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

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Mr.A.M.Saraogi for the applicant.

Ms.Sudha Gandhi h/for B.R.Vishwa-karma for original Complainant.

Mr.P.S.Hingorani APP for the State

Coram : R.S.Mohite,J

Date : 14.08.2006.

PC

1. This is an application for grant of anticipatory bail. The applicant is shown as an accused in C.R.No.215/2006 registered by the MIDC police station, Andheri (East) for alleged offences under Sections 447, 448, 452 & 380 r/w 34 of IPC. I perused the Complaint filed by one Aslam Mohammed. He claims to be the tenant of premises being flat no.4 on the 1st floor of the building known as Reyfreda

situated on the junction of Chakala and Mahakali Caves road, Andheri (East). That he had allowed his daughter by name Nazia to run business service centre in the said premises. That sometimes early in the year 2001 he was approached by the present applicant who was running a company by name M/s.United System Infotech Pvt.Ltd., with a request to give him a part of the premises for running a business service centre. Accordingly, under the written agreement dated 16.4.2001, 3 out of the 5 rooms in the said flat were given for running the business service centre on the terms which are contained in the agreement. The said agreement was to run for 11 months and was renewed from time to time. The last agreement was entered into on 21.2.2004. It was contended that in all the agreements, areas of the 3 rooms are shown as 900 and it was mentioned that 2 rooms will be

retained for the residence of the Complainant. In short, the grievance in the FIR is that on 8.5.2006 the accused in this case entered the residential part and threw away the family members and threw their belongings out. It is further the allegation that in this process theft was committed for an amount of Rs.12,000/- and certain gold ornaments as mentioned in the FIR. It appears from the documents which have been filed before me that on this very basis, complainant and his daughter have also filed a suit for permanent injunction in the City Civil Court. It appears that accused have also filed a suit for protecting their possession of the flat. Interim relief granted in that matter was carried upto this Court. Justice Khanwilkar has allowed the accused to remain in the suit premises and enjoy the same in terms of the agreement in question and on the condition

of making certain payments as mentioned in the High Court's order, the High Court has continued the order of status-quo.

2. On perusal of the order passed by this Court and the FIR, it appears to be that in the 3 leave & license agreements it is consistently mentioned that the applicant and his company were to operate in 3 rooms. It is sought to be contended that this term was put in the agreement to avoid the suit by the landlord against the Complainant for eviction.

3. In the circumstances, in view of what is contained in the agreement, there is a strong possibility that 2 rooms were reserved for the complainant. At this point of time, I am not in a position to accept the explanation given as to why these clauses are put in the agreement and hence, in the

circumstances, I am not inclined to grant anticipatory bail. Application stands rejected. However, it is made clear that the observations made in this order will not be used either before the Civil Court or in application for grant of bail. Advocate for the applicant seeks some time to surrender. On his request, two weeks time is granted to surrender. The applicant may not be arrested for a period of 2 weeks. This order is passed against the present applicant considering the role attributed to him and as he is also a signatory of all the agreements.

(R.S.Mohite,J)